

CHAPTER 1

INTRODUCTION

1.1 Background

Contractual obligation by any party in any contract will be of questionable state if the understanding of the terms and interpretation of the contents of the contract documents are not fully appreciated. Clear requirements and needs of each party will be translated in the documents signed by both parties. Factors of contractual language and its judicial interpretation may lead to the problem of understanding of the needs of the contract which may lead to misinterpretation and misunderstanding of the facts in contract obligations. This situation may prevail an opportunistic party to take the unfair advantage of another party when an adjustment to be made in the contract.

The contract documents drafted for any contract should fulfill the intended roles of being the references and guidelines for the relationships between the contracting parties throughout the project. Therefore it is necessary to have proper understanding of the contents of the contract documents which leads to the enhancement of the contractual relation and assurance of the intended deliverance of the product.

1.2 Problem Statement

The complexity of contract documentation in a construction contract most of the times hinders the contract participants especially the contractor and the clients to really understand the contractual needs and obligations of the parties. The various backgrounds of the contractors in our construction industry especially in the Public Sectors contribute to difficulties in delivering the required product to the clients. Therefore, understanding the contents and requirements of the contract documents will have great influence in the smooth and good performance of the deliverance of the products as to satisfy the needs of the clients.

For the smooth implementation of the project, it is therefore necessary for the contractors to be well verse with the contract interpretation and literacy of the contract documents in order not to dispute the product delivery in term of cost, time and quality.

Therefore it is necessary to study the level of understanding of contract document by these contractual participants so as to achieve amicable satisfaction among themselves.

1.3 Objectives

The aim of the study is to evaluate level of understanding of the principles, obligations and commitment required by the contractor and parties in the contract to satisfy the contractual needs among the contractors and the clients.

The objectives of this study are as follows:

- (i) To determine the expected level of understanding towards contract documents.
- (ii) To evaluate the importance of understanding towards contract documents by the contracting parties.
- (iii) To identify factors that inhibits understanding of contract documents.
- (iii) To identify the strategy to improve the level of understanding of contract documents by the contracting parties.

1.4 Scope and Limitation of the Study

The scope of the study will focused on the medium to bigger capacity projects from RM 500,000.00 and above which were carried out by the JKR Malaysia specifically limited in the area of Negeri Sembilan Darul Khusus. The sample of the study will only focus the background of the contractors which are registered with the Construction Industry Development Board (CIDB) and Contractor Service Centre of Malaysia (PKK) having the Indigenous (Status Bumiputra) status that is active in the project implementation with Public Work Department Malaysia. Survey will be conducted on the construction company within Negeri Sembilan Malaysia and the neighboring States.

The level of understanding towards contract documents will be analyzed and evaluated based on factors such as competencies, attitudes, past experiences, commitments and education background. This is to judge the seriousness of the parties when they are involved in the contractual binding. The study will also include the legal interpretation of the documents but focused on the actual

requirements of each party towards each other in order to accomplish mutual satisfaction based on the goodwill spirit of the contractual needs.

1.5 Brief Research Methodology

The methodology used in conducting this research is through literature search, the structured interviews with the professionals who are involved in contract administration in their work and questionnaire survey among the contractors in the respective states of Malaysia. The literature search explores the contract requirements generally practice in Malaysia and abroad. Review has been also carried out on the practices by the government bodies by using the JKR forms of contract and documentation process generally practice by JKR Malaysia in the contract implementations.

The questionnaire survey has been conducted among the contractors within the category of the study to assess the opinions of the practitioners in the construction industry towards the objectives of the study. Besides the questionnaire survey some interviews has also been conducted with the professionals as the expert panel which includes the law practitioner and middle to top managers to assess their opinions towards the expected level of understandings of contract documents in the subject as mentioned in the objectives. The interviews are divided into face to face question and answers session and answering the structured questionnaire.

The qualitative data generated from the questionnaire has been analyzed using statistical method and finally inferences were made to support the study findings. The overall sequence of research process undertaken is shown in figure 1.1.

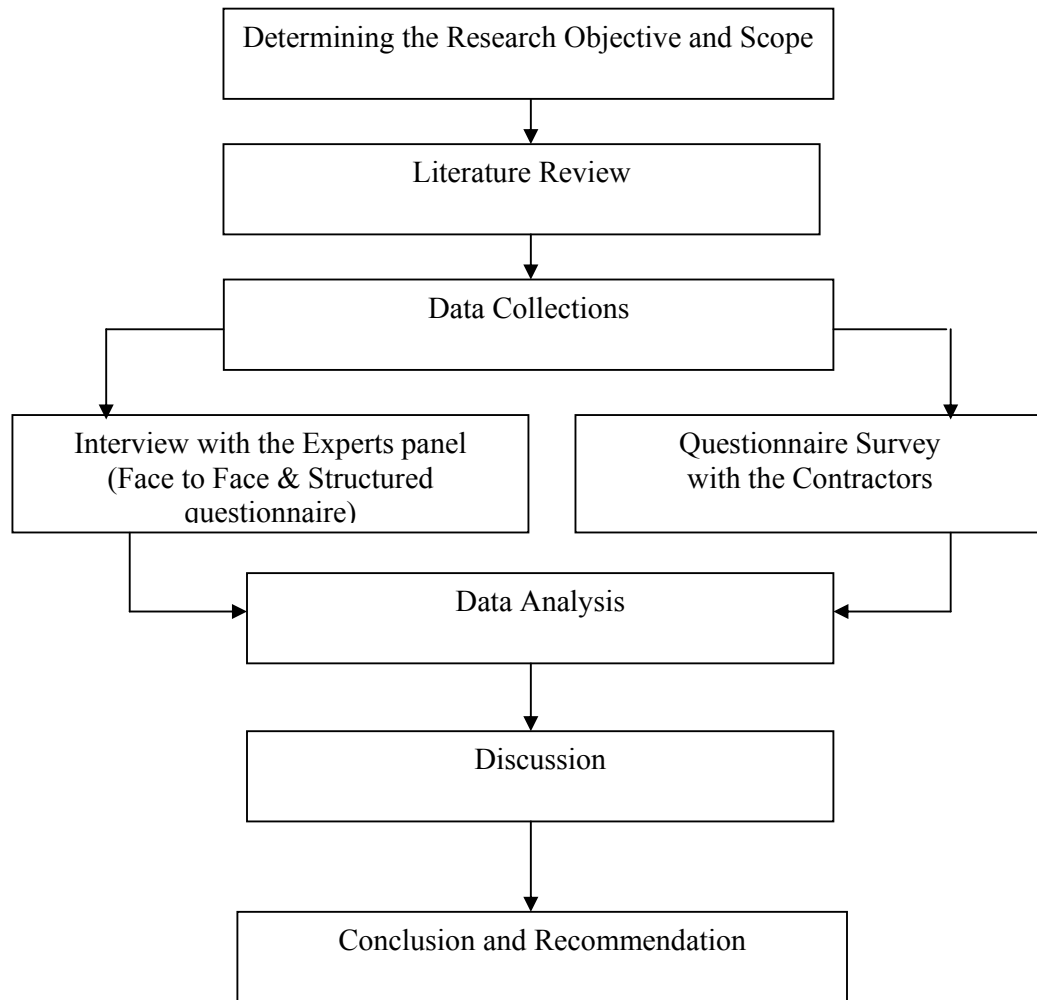


Figure 1.1 Research methodology sequence

1.6 Limitation of the study

The limitations of the sampling are confined to participants from companies registered with Construction Industry Development Board Malaysia (CIDB) and Contractor Service Centre (PKK) having indigenous status (Status Bumiputra) with capacity of RM500000 and above. These contractors have been selected randomly within the States of Negeri Sembilan, Selangor and Federal Territory of Kuala

Lumpur Malaysia. The level of understanding of contract document by the contractors has been evaluated within the parameters as below:

- a. Attitudes;
- b. Past Experience;
- c. Commitments; and
- d. Education Background.

The study is focusing within Indigenous Group (Bumiputra Status) of contractors only and cannot be generalized for all contractors despite the potential of similar characteristic may exist. The discussion of the results is then presented within the vicinity of responses and constraints may arise due to the localized conditions of the public sector projects participated by the indigenous contractors handles by the states JKR or JKR Malaysia.